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SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

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| **Damen Aguila, Mario Lanza Dyer, and Jamie Scarborough,**<br><br>Plaintiffs,<br><br>v.<br><br>**Municipality of Anchorage,**<br><br>Defendant | No. 3AN-25-04570 CI |

**OPPOSITION TO MOTION FOR RECONSIDERATION OR CLARIFICATION**

The Court should deny the Municipality of Anchorage's motion for reconsideration or clarification. The Court's November 19 order denying the motion to convert correctly identified Plaintiffs' surviving claims: Plaintiffs seek declaratory relief holding the Municipality's "prohibited camping" regime unconstitutional, not reversal of the Municipality's decision to abate the Arctic-Fireweed encampment. Neither the Court nor Plaintiffs have cabined these claims as a purely facial challenge. Such a determination is unwarranted at this stage of the litigation.

Furthermore, Plaintiffs' declaratory relief claims allege violations of their fundamental rights under the Alaska Constitution. Robust factual development will facilitate the adjudication of these claims and is common practice in state constitutional litigation seeking facial or as-applied rulings.

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## ARGUMENT

### I. Reconsideration is not warranted because the Court accurately characterized Plaintiffs' surviving declaratory relief claims and permitted such claims to proceed as an original action.

The Municipality fails to show that the Court overlooked or misconceived any material fact or proposition of law in its November 19 order.[1] Contrary to the Municipality's assertions,[2] the Court's order denying the motion to convert did not misconstrue Plaintiffs' claims. The Court correctly found that Plaintiffs' surviving claims seek declaratory relief holding the Municipality's prohibited camping ordinance unconstitutional, as opposed to reversal of its prohibited campsite determination and enforcement action at the Arctic-Fireweed encampment.[3]

Per *Owsichek v. State, Guide Licensing & Control Board*, claims for declaratory relief do not need to be converted into an administrative appeal

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[1] ALASKA R. CIV. PROC. 77(k)(1)(B) (permitting reconsideration if the court has "overlooked or misconceived some material fact or proposition of law").

[2] Def. Mot. for Reconsideration or Clarification at *1 ("[T]he Court's Order is based on a misconception of Plaintiffs' Complaint[.]").

[3] Order Den. Mot. to Convert at *5 ("Plaintiffs' Complaint challenges the prohibited campsite ordinance, not an administrative decision."). *See also* Pls. Opp. Mot. to Convert at *5 ("Plaintiffs' surviving claim is for declaratory relief and concerns the constitutionality of the 'prohibited camping' provisions of the Municipal Code."); Compl. at 21 (seeking "a declaratory judgment declaring that the Municipal Code's 'prohibited camping' regime violates the Alaska Constitution").

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because they do not seek reversal of an agency determination.[4] Here, Plaintiffs seek declaratory relief,[5] as opposed to "damages or injunctive relief allowing them to return to a campsite from which they were previously abated."[6] Thus the Court was correct to maintain Plaintiffs' case as an original action.[7]

### A. The Municipality misconstrues the Court's holding regarding the nature of Plaintiff's claims and requested relief.

The Municipality's motion for reconsideration misinterprets the Court's November 19 order.[8] The Court did not conclude that Plaintiffs' suit "only facially challenges an ordinance," leaving no opportunity for an as-applied

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[4] *Owsichek v. State, Guide Licensing & Control Bd.*, 627 P.2d 616, 619 (Alaska 1981) [*Owsichek I*]. The Court accurately summarized the conversion standard in its order. *See* Order Den. Mot. to Convert at *3 ("When the requested relief cannot be granted 'without reversing the prior agency determination, the claim should be treated as an administrative appeal.' . . . [Conversely,] [p]ure questions of law and constitutional challenges fall 'within the special expertise' of the Court rather than the agency.") (citations omitted). As the Court has recognized, this case falls into the latter category. *Id.* at *8 ("Plaintiffs' claims for declaratory relief request this Court address constitutional challenges to the ordinance, not an application of the ordinance.").

[5] Order Den. Mot. to Convert at *10 ("Plaintiffs' Complaint . . . challenges the ordinance that gives the MOA authority to execute abatements on constitutional grounds."). *See also* Pls. Opp. Mot. to Convert at *5 ("Plaintiffs' surviving claim is for declaratory relief and concerns the constitutionality of the 'prohibited camping' provisions of the Municipal Code.").

[6] Order Den. Mot. to Convert at *7–8.

[7] Order Den. Mot. to Convert at *10. This conclusion does not foreclose other parties' ability to raise constitutional questions in administrative appeals as well. *Smith v. Anchorage*, 568 P.3d 367, 368 (Alaska 2025).

[8] Def. Mot. for Reconsideration or Clarification at *1–2.

challenge.[9] Rather, the Court only held that Plaintiffs' requested relief "is clearly against the ordinance itself."[10] Such relief could be granted on facial or as-applied grounds.

Declaratory relief may be granted on facial grounds when there is "*no set of circumstances*" in which the challenged law can operate constitutionally.[11] Conversely, declaratory relief may be granted on as-applied grounds when the law cannot operate constitutionally in specific "*categories [of] circumstances*."[12] For example, the Alaska Supreme Court has held laws unconstitutional as applied to a particular category of parties[13] and to a particular category of conditions.[14] While the facts of a case can help define the

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[9] *Id.*

[10] Order Den. Mot. to Convert at *5.

[11] *Ass'n of Vill. Council Presidents Reg'l Hous. Auth. v. Mael*, 507 P.3d 963, 982 (Alaska 2022) (citing *State v. Am. C.L. Union of Alaska*, 204 P.3d 364, 372 (Alaska 2009)) (emphasis added); *cf. Dep't of Educ. & Early Dev. v. Alexander*, 566 P.3d 268, 278 (Alaska 2025) (noting that the Alaska Supreme Court has "not always been consistent when describing precisely what the bar is" for facial challenges, applying either the "plainly legitimate sweep" standard or the "no set of circumstances" standard in various instances).

[12] *Am. C.L. Union of Alaska*, 204 P.3d at 372.

[13] *See e.g.*, *Knolmayer v. McCollum*, 520 P.3d 634, 663 & 663 n. 171 (Alaska 2022) (holding a collateral-source compensation law unconstitutional as applied to a specific category of claimants and instructing the superior court to adopt a test for determining who falls into that category); *State, Dep't of Revenue, Child Support Enf't Div. v. Beans*, 965 P.2d 725, 728-29 (Alaska 1998) (holding a child support statute unconstitutional as applied to one category of obligors).

[14] *See e.g.*, *Alaska Pub. Offs. Comm'n v. Patrick*, 494 P.3d 53, 60 (Alaska 2021) (holding that a campaign finance law unconstitutional "as applied to contributions to independent expenditure groups").

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bounds of the category in question, the relief granted by an as-applied ruling frequently extends beyond the specific government action at issue.[15]

Both facial and as-applied rulings are possible here. When it ultimately reaches the merits of this case, the Court may find that there is no set of circumstances in which the Municipality's prohibited camping ordinance would be constitutional and void it in its entirety. Alternatively, the Court may find that this ordinance is unconstitutional as applied to a category of circumstances—such as when there is no available shelter space[16] or when the government relies on conjectural justifications for abatement[17]—and limit its future application accordingly. While the abatement of the Arctic-Fireweed encampment would provide an "illustrative" example upon which to base an as-applied ruling,[18] the ruling itself would concern the constitutionality of the ordinance itself.

Thus, irrespective of whether the Court's final ruling is facial or as applied, the focus of its inquiry will be the constitutionality of the prohibited

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[15] *See e.g.*, cases cited *supra* n.13-14.

[16] *See* Pls. Opp. Mot. to Dismiss at *8–9 & 9 n.23 (discussing the Municipality's failure to instruct Plaintiffs on where they could legally go); Compl. at *2 (discussing the lack of available shelter or warming space).

[17] *See* Pls. Opp. Mot. to Dismiss at *13 (discussing the "identical, broad justification[s]" invoked by the Municipality for its abatements).

[18] *See* Order Den. Mot. to Convert at *6 ("Plaintiffs' illustrative application of the alleged unconstitutionality of the ordinance does not alter the nature of their claims or their requested relief.").

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camping ordinance. And, in either instance, the relief granted will be a declaratory judgment regarding that ordinance's constitutionality, as anticipated by the Court's latest order.[19]

It would be premature to limit consideration of the Plaintiffs' claims to be solely facial or as applied at this time. Courts routinely allow claims to proceed under both standards throughout the course of litigation.[20] Indeed, the Alaska Supreme Court has considered declaratory relief claims under both standards on appeal.[21] This Court has accurately identified Plaintiffs' surviving claims as being for declaratory relief and it need not narrow the scope of those claims further at this stage of the litigation.

## II. Fact-finding will facilitate the adjudication of Plaintiffs' claims for declaratory relief, in which fundamental rights are at stake.

What the Municipality characterizes as a motion for "clarification" amounts to a motion to forgo fact-finding. Contrary to the Municipality's

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[19] Order Den. Mot. to Convert at *5–6.

[20] *See e.g.*, *Alexander*, 566 P.3d at 274 (describing the plaintiffs' original pleadings, which sought "an order declaring [the challenged statutes] facially unconstitutional or, in the alternative, unconstitutional as applied to pay for private school classes or tuition"); *Beans*, 965 P.2d at 728 (holding on appeal that the challenged child-support statute "is not unconstitutional on its face[,]" but it would be unconstitutional if applied to "an obligor who was unable to pay child support").

[21] *See e.g.*, *Mael*, 507 P.3d at 982–84 (upholding the constitutionality of the challenged damages statute under both the facial and as-applied standards); *Sands ex rel. Sands v. Green*, 156 P.3d 1130, 1132 n.2 (Alaska 2007) (noting that the Court did not need to reach the parties' as-applied arguments, because it held the statute facially unconstitutional instead).

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assertions,[22] the Plaintiffs' constitutional claims warrant robust factual development before reaching the merits of this case.

The nature of Plaintiffs' surviving claims should dictate the scope of discovery. While declaratory relief claims that turn on questions of textual interpretation may require less robust fact-finding,[23] claims that allege violations of fundamental rights often warrant extensive factual development. This is, in part, because substantial constraints on fundamental rights are subject to strict scrutiny.[24] When conducting a strict scrutiny analysis, Alaska courts have been wary of conjectural justifications for the challenged statute

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[22] Def. Mot. for Reconsideration or Clarification at *4 (arguing that "no discovery is appropriate" here).

[23] For example, in *Owsichek*, the Plaintiff's declaratory relief claim turned on matters of statutory and constitutional interpretation. *Owsichek I*, 627 P.2d at 619 ("Owsichek's request for declaratory relief requires the superior court to review only the statute and regulations and not the Guide Board's decision"); *see also Owsichek v. State, Guide Licensing & Control Bd.*, 763 P.2d 488, 491 n.8 (Alaska 1988) [*Owsichek II*] (expanding the questions presented to include whether the statute contravened the common use clause of the Alaska Constitution). Consequently, adjudicating Owsichek's claims required the court to review publicly available legislative history and the constitutional convention records, as opposed to discovery productions. *See Owsichek II*, 763 P.2d at 493–94 (evaluating the relevant constitutional convention records); *id.* at 496-98 (evaluating the relevant legislative history).

[24] *Doe v. Dep't of Pub. Safety*, 444 P.3d 119, 125 (Alaska 2019) ("[W]hen a law substantially burdens a fundamental right, the State must articulate a compelling state interest that justifies infringing the right and must demonstrate that no less restrictive means of advancing the state interest exists.").

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and instead favor the establishment of "hard facts."[25] In the absence of undisputed concrete facts, the Alaska Supreme Court has remanded cases for further factual development before reaching the merits of the plaintiffs' declaratory relief claims.[26]

Here, the challenged prohibited camping law implicates Plaintiffs' fundamental rights, including their rights to liberty, privacy, health, and welfare.[27] Consequently, the Court will likely need to conduct a strict scrutiny analysis regarding the prohibited camping law as a restraint on Plaintiffs' fundamental rights. The discovery process will provide this court with the concrete facts it needs to conduct such an analysis effectively. By developing

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[25] *See e.g.*, *Breese v. Smith*, 501 P.2d 159, 172 (Alaska 1972) (finding that the school board had failed to establish that its interest in the challenged regulation was compelling, because they justified it with "lay opinion testimony, unsupported by figures or statistics" as opposed to "hard facts"); *State v. Planned Parenthood of Alaska*, 35 P.3d 30, 46 n.102 (Alaska 2001) [*Planned Parenthood I*] (reiterating the *Breese* court's preference for "hard facts" over "mere conjectural justifications").

[26] *See e.g.*, *Planned Parenthood I*, 35 P.3d at 46 (remanding declaratory relief claims to superior court for an evidentiary hearing); *State v. Planned Parenthood of Alaska*, 171 P.3d 577, 580, 585 (Alaska 2007) [*Planned Parenthood II*] (describing the nearly month-long evidentiary hearing held following *Planned Parenthood I* and subsequently striking down the challenged statute as a violation of the Alaska Constitution's privacy clause).

[27] Compl. at *15, 18-20. Plaintiffs' Complaint also alleges the violation of their rights to be free from cruel and unusual punishment, unreasonable search and seizure, and to procedural due process. Compl. at *15-18. Though not subject to strict scrutiny, the adjudication of these alleged rights violations would also benefit from further factual development regarding the lack of available legal spaces for Plaintiffs to exist, the property deprivations experienced by the Plaintiffs, and the lack of a constitutionally mandated predeprivation hearing.

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the factual record in this case, the parties will have the opportunity to interrogate the justifications for the Municipality's abatement regime, examine how it is enforced in practice, and consider the constraints it places on Plaintiffs' fundamental rights.[28] The Court will then be able to verify Plaintiffs' claims regarding, *inter alia*, the negative health consequences of the Municipality's overall prohibited camping regime; the arbitrary nature of the abatement process; the lack of available alternative legal places for Plaintiffs to exist; and the significance of the loss of personal property during abatements. These facts may prove instrumental in establishing that the legal regime at issue violates Plaintiffs' rights under the Alaska Constitution.

### A. Factual development is necessary for both facial and as-applied challenges to statutes.

It is clear that factual development is warranted in as-applied challenges.[29] Facts can be equally important in facial challenges as well.

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[28] For example, Plaintiffs should be free to depose Municipal employees involved in the abatement process—including the Special Assistant to the Mayor on Homelessness and Health, the Municipality's Healthy Spaces Supervisor, and the CAP/MIT Sergeant—regarding the asserted rationales for abatement; the impact of abatement on the health of the Plaintiffs, particularly when there is no available shelter; and the Municipality's property handling practices before, during, and after abatement.

[29] *Kyle S. v. State, Dep't of Health & Soc. Servs.*, 309 P.3d 1262, 1268 (Alaska 2013) ("An as-applied challenge requires evaluation of the facts of the particular case in which the challenge arises."). The Municipality does not appear to dispute the need for factual development in as-applied challenges. *See* Def. Mot for Reconsideration or Clarification at *4 (asserting only that fact-finding is unnecessary to "resolve the merits of a facial challenge").

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Alaska courts are hesitant to resolve facial challenges in the absence of sufficient facts. Far from "routinely" forgoing fact-finding in facial challenges,[30] Alaska courts have traditionally refused to rule on facial challenges in the absence of concrete, undisputed facts.[31] An adequate factual record is particularly important in cases that implicate important interests.[32]

Such important interests are at stake in this case, which implicates the constitutional rights of the Plaintiffs and the scope of the Municipality's power.[33] The Court already recognized the importance of these interests in its order denying the Municipality's motion to dismiss.[34] Robust factual development through the discovery process will provide the Court with the evidence it needs to rule on the merits of Plaintiffs' claims and preserve the interests at stake.

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[30] Def. Mot for Reconsideration at *4 (asserting that "[c]ourts routinely resolve the merits of a facial challenge without factual development").

[31] *See e.g.*, *Brause v. State, Dep't of Health & Soc. Servs.*, 21 P.3d 357, 360 (Alaska 2001) (refusing to rule on a facial challenge to the constitutionality of a statute "without more immediate facts" because it would be it would "be difficult to deal intelligently with the legal issues presented"); *Planned Parenthood I*, 35 P.3d at 46 (remanding a facial declaratory relief claim to superior court for an evidentiary hearing prior to ruling on the merits).

[32] *See Planned Parenthood I*, 35 P.3d at 46 ("*Given the importance of the interests at stake*, we are reluctant to pass judgment on the quality of this evidence or its substantive implications without the benefits of a full adversarial process.") (emphasis added).

[33] *See* Pls. Opp. Mot. to Dismiss at *17–19.

[34] *See* Order Den. Mot. to Dismiss at *9 (finding that this case presents issues of public interest).

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The Municipality mistakenly relies on *Briggs v. Yi*, a federal district court case, to argue against the need for discovery.[35] The facts of *Briggs*, however, are distinct from those presented here. In *Briggs*, the government moved for partial summary judgment prior to discovery on Mr. Briggs's claim that a local "disorderly conduct" law was facially unconstitutional.[36] Mr. Briggs's counsel asked to defer consideration until after discovery but conceded that this claim was "not a fact dependent inquiry" and there was "no factual inquiry that need[ed] to be undertaken" to adjudicate it.[37]

Plaintiffs make no such concession here. Plaintiffs' surviving claims *are* fact-dependent inquiries and further factual development is needed to resolve them. Moreover, the Municipality has not made a formal motion for summary judgment prior to discovery. Rather, it has requested to forgo discovery through a motion for clarification appended to a motion for reconsideration. The posture of this motion limits the responses available to the Plaintiffs.[38]

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[35] Def. Mot. for Reconsideration or Clarification at *4–5 (citing *Briggs v. Yi*, No. 3:22-cv-00265-SLG, 2023 WL 2914395, at *5 (D. Alaska Apr. 12, 2023)). The Municipality also cites *Zora Analytics, LLC v. Sakhamuri*; however, that case chiefly concerned contract and negligence claims between private parties. No. 3:13-cv-639-JM WMC, 2013 WL 4806510, at *1–2 (S.D. Cal. Sept. 9, 2013). Thus, it is inapposite to the constitutional issues presented here.

[36] *Briggs*, 2023 WL 2914395, at *5.

[37] *Id*.

[38] Had the Municipality moved for summary judgment, Plaintiffs could move to defer consideration of its motion until after the close of discovery. ALASKA R.

## CONCLUSION

Both components of the Municipality's motion are premised on a misunderstanding of the Court's latest order. The Court and the Plaintiffs agree that the surviving claims in this matter are for declaratory relief regarding the constitutionality of the Municipality's prohibited camping regime. Such relief can be granted on facial or as-applied grounds and, in either circumstance, their adjudication would benefit from robust factual development.

For these reasons, the Court should deny the Municipality's motion, order the Municipality to file its Answer to Plaintiffs' Complaint, and calendar a scheduling conference.

Dated: December 9, 2025

/s/ Helen Malley

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CIV. PROC. 56(f); *Demmert v. Kootznoowoo, Inc.*, 960 P.2d 606, 612 (Alaska 1998) (holding that when a motion for summary judgment is filed prior to the start of discovery, the opposing party is entitled to an extension to conduct discovery germane to its opposition if it "has not been dilatory in seeking discovery and identifies those people whom it intends to depose") (citations omitted). Deferred consideration would be warranted here, because Plaintiffs have maintained their desire to develop the facts of this case, *see* Pls. Opp. Mot. to Convert at *7–8 (discussing Plaintiffs' interest in fact-finding in order to develop their claims and vindicate their due-process interests), and would seek depositions of, at minimum, the persons listed at *supra* note 28.

## CERTIFICATE OF SERVICE

On December 9, 2025 a true and correct copy of the foregoing Opposition to Motion for Reconsideration or Clarification was served on:

Joseph Busa, Joseph.Busa@anchorageak.gov
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